IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22375 of 2004

Between:

R.Rama Rao S/o.Sri.R.Veeranna
Kadapa Region, Kadapa Dist.

..... PETITIONER

AND

1 A.P.S.R.T.C., its Managing Director
Musheerabad, Hyderabad.
2 Selection Committee for Head of the Dept Region Manager
O/o.A.PS.R.T.C.., Musheerabad, Hyderabad.
3 A. Purushotham, Chief Marketing Manager, APSRTC, O/o. vice chairman & Managing Director, Musheerabad, Hyderabad
R3 is impleaded as per court order dt. 19-1-2005 in WPMP 358/05

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order direction or writ particularly one in the nature of Writ Mandamus or any other appropriate Writ (i) declaring the action of the respondents in not considering the candidature of the petitioner for promotion to the post of Regional Manager is illegal and arbitrary (ii) declare that Circular No.PD-42/2004 dt 11-11-2004 has no application for consideration of the candidature of the petitioner for promotion in pursuance of the selection committee proceedings held on 18-11-2004 and (iii) consequently declare that the petitioner is eligible for promotion against roster point No.8 in the selections held on 18-11-2004 with all consequential benefits.

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondents: MR.P.V.SWAMY

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 22375 of 2004

O R D E R:

Challenging the action of the respondents in not considering the candidature of the petitioner for promotion to the post of Regional Manager as illegal and arbitrary, the present writ petition is filed.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner joined the A.P.S.R.T.C. as Officer under Training (OUT) on 17.11.1986 in pursuance of the selection. On completion of training, he was promoted as Junior Scale Officer on 17.5.1988. Thereafter he was promoted as Depot Manager and he was further promoted as Senior Scale Officer on 2.9.1996. Presently he is working as Deputy Chief Mechanical Engineer at Kadapa Regional Office. The Senior Scale Officer is eligible for further promotion to the post of Head of the Department/Regional Manager. The criteria for filling up the post of Regional Manager is in terms of Circular No.PD-16/2002 dated 7.9.2002. The Corporation issued Circular No.28/2003 dated 16.4.2003 for implementation of rule of reservation. The Corporation adopted the guidelines issued by the Government of A.P. in G.O.Ms.No.2 dated 9.1.2004 which are also applicable in the category of HOD/Region Manager cadre. On receipt of letter from the Government of A.P. dated 20.10.2004 the Board of Directors of the respondent-corporation met on 29.10.2004. Thereafter the selection committee for promotions to the post of

Regional Manager/HOD met on 18.11.2004. In the selection committee proceedings held on 18.11.2004 the vacancies for the roster point Nos. 7 to 16 were taken up for consideration. The roster point No.8 earmarked for Schedule Tribe has not been filled up so far. Although Sri Purushottam was considered against the said post, no order was issued promoting him to the post of Regional Manager/HOD. As per the Circular PD No.42/2004 dated 11.11.2004, an officer who is undergoing the penalty of stoppage of increments with or without cumulative effect shall not be considered for promotion during the operation of the punishment period. The petitioner was issued a charge sheet dated 16.6.2004 for which he gave an explanation. The Executive Director, Kadapa issued punishment order dated 26.10.2004 imposing the punishment of deferment of annual increment when next falls due for a period of one year without any cumulative effect. According to the petitioner, his increment is due in May and as per the imposition of punishment order dated 26.10.2004 his annual increment due in May 2005 shall be deferred for a period of one year. As on the date of issuance of the final order dated 26.10.2004 or as on the date of selection made on 18.11.2004 he was not undergoing any punishment and therefore the circular instructions dated 11.11.2004 in PD No.42/2004 cannot come in the way of consideration of his candidature for promotion and hence, ignoring his claim and considering his juniors in the seniority to the post of Regional Manager is wholly erroneous and unjust. Hence the present writ petition.

Respondents 1 and 2 filed a detailed counter affidavit inter alia contending that the period of penalty will reckon from the date of order to the date on which the effect of penalty concludes. As per the Regulations of the APSRTC Employees (Pay & Allowances) Regulations, 1964 the increment of an employee can be withheld if his conduct has not been good or his work has not been satisfactory. In similar cases the Corporation implemented the Government Circular dated 4.1.1999 where under the employee whose increments are withheld shall not be recommended for promotion

during the period for which the increments were ordered to be withheld with effect from the date of the issue of the order imposing the penalty even though the increment is falling after the date of issue of the order of punishment. As the petitioner was undergoing punishment as on the date of selection held on 18.11.2004, he was not promoted. Therefore, the petitioner cannot claim that he was not undergoing any penalty as on the date of selection. Any penalty imposed on the employee will commence from the date of issue of order and will be up to the period for which the order will have its effect. Hence, the respondents 1 and 2 pray to dismiss the writ petition.

The 3rd respondent also filed counter affidavit taking the similar pleas as are taken by the 1st and 2nd respondents. So it is not necessary to mention all the pleas taken by the 3rd respondent.

Though several aspects have been raised in the writ petition which were denied by the respondent-corporation with regard to the rule of reservation, earmarking of certain posts etc., but at the time of hearing of the writ petition the only point raised by the learned counsel for the petitioner herein is that as per the Circular dated 11.11.2004, whether withholding of promotion due to stoppage of increment comes into operation during the punishment period and whether the punishment of deferring annual increment when next falls due be deferred for one year. Basing on the punishment, the learned counsel for the petitioner contended that the operation of punishment commences from May, 2005 because the next increment falls due in the month of May, 2005 and after May,2005 the petitioner's case cannot be considered for promotion and hence there is no bar for considering the case of the petitioner as on 18.11.2004 when the selection committee took up the matter for selection of the candidates and as on the date there is no impediment for giving promotion to the petitioner.

On the other hand, learned counsel for the respondents 1 and 2 contended that the punishment order will commence from the

date of imposition and not from the date that falls due for increment and as the petitioner is suffering with punishment at the time of giving promotions, he was rightly rejected by the selection committee and the order does not suffer from any incurable legal infirmities so as to call for interference by this court. To the same effect are the contentions of the learned counsel for the respondent No.3.

The short point that arises for consideration in this appeal is that when the punishment of stoppage of increment is ordered, from which date the operation of punishment commences.

It is not disputed before this court that the petitioner was imposed punishment vide proceedings dated 26.10.2004 which reads:

> "in view of the above, I hereby order that your annual increment when next falls due, be deferred for a period of one year which shall not have the effect of postponing your future increments".

It is not disputed before this court that the next annual increment falls due in the month of May, 2005. That means, he was granted increment in May, 2004. There is no dispute about the Circular No. PD 42/2004 dated 11.11.2004 which reads as follows:

> "The penalty of stoppage of increment with/without cumulative effect, shall debar the officer for promotion to a higher post during the operation of punishment period".

Though the above circular instructions do not indicate about the starting point of the operation of the punishment if any awarded by the disciplinary authority, according to the learned counsel for the petitioner, the words "operation of punishment period" mean that it is from May 2005 to May 2006. But, on the other hand, learned counsel for the respondents 1 and 2 contended that from the date of imposition of penalty i.e. on 26.10.2004 the operation starts

and thereafter the petitioner against whom the punishment is awarded is not entitled for the increment during the period one year. In support of his contention, the learned counsel relied upon a decision in Union of India v. K.V. Janakiraman wherein it is held:

> "When an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalized, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, althourh it is for conduct prior to the date the authority considers the promotion".

There is no dispute about the above proposition of law because in view of the above decision it is clear that an employee has no right to claim promotion, especially to the selection post. The above decision is not directly on the point with regard to the operation of the date of punishment in case of withholding the increment for a period of one year. Rule 11(2) of the Pay & Allowance Regulations of the respondent-Corporation reads as follows:

> "(2) An increment may be withheld from an employee by the authority specifically

> authorized in this behalf, if the employee's conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment the competent authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing further increment also".

Even the above provision does not indicate from which date i.e. from the date of order or from the date which falls due for increment, the punishment operates. The Government of A.P. vide Circular Memo No.34633/Ser.C/99 dated 4.11.1999 clarified that the employee whose increments are withheld shall not be recommended for promotion during the period for which the increments were ordered to be withheld with effect from the date of the issue of the order imposing the penalty. Basing on the said circular, the respondent-corporation issued Circular No.PD-47/2004 dated 15.12.2004 clarifying that the penalty of stoppage of increment with/without cumulative effect shall debar the officer for promotion to a higher post from the date of issue of the order imposing the penalty till completion of the punishment period.

Learned counsel for the petitioner contended that these circular instructions have no application since the selection took place prior to issuance of these proceedings. Even assuming for a moment that the Circular dated 15.12.2004 is not applicable to the facts of the case, but still when a penalty is imposed on the employee, it will commence from the date of issue of the order but not from the later date. The effect of the order of withholding the increment is that the employee remains on the same pay without any increment for a period for which such increment is ordered to be withheld and any punishment imposed will come into effect from the date of the order issued by the competent authority. The operation of that order commences, in my considered opinion, from the date of issue of the order passed by the disciplinary authority. In view of the punishment, the annual increment when next falls due has to be deferred for one year. During that period, the petitioner is not entitled

for any increment. That does not mean the punishment commences from the date next falls due for increment. If the date of order is taken into consideration, the petitioner cannot be promoted to the higher post. As per the Regulation 8(1)(4), when an employee is suffering with any penalty, he is not eligible for any selection as an officer during the period of punishment. Therefore, I am of the considered opinion that the punishment awarded by the disciplinary authority will commence from the date of its order but not from any future date. Therefore, the petitioner is not entitled for promotion in view of the Circular No.PD-42/2004 dated 11.11.2004.

The writ petition is devoid of merit and it is accordingly dismissed.

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K.C. Bhanu, J.

Date: --02—2005.

MVB.

.... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Managing Director, A.P.S.R.T.C.,
Musheerad, Hyderabad.
2 The Selection Committee for Head of the Department/Region Manager,
O/o.A.PS.R.T.C.., Musheerabad, Hyderabad.
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